REMARKS

Claims 1-6 and 8-77 are pending in the Application.

Claims 8-20, 23-37, 59-64 and 66 have been allowed.

Claims 1-6, 21, 22, 38-43, 56-58, 67-71 and 75-77 stand rejected.

Claims 46-55 and 72-74 are objected to.

The finality of this Office Action is premature. In response to the Office Action dated December 27, 2004, Applicants amended claim 1 to incorporate the limitations of claim 7, which had been indicated by the Examiner as being allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Thus, the limitations of claim 7 were moved up into claim 1, with the result being that claim 1 is essentially claim 7 rewritten in independent form.

In the present Office Action, the Examiner has now rejected claim 1 as being unpatentable over *Chen* and *Verbeek*. This is a new rejection not necessitated by an amendment to the claims. Thus, there is a claim (new claim 1) that has a new rejection but which previously was not rejected. Therefore, the Examiner must remove the finality of this Office Action as set forth in MPEP § 706.07(a).

Claims 1-3, 5, 21-22, 38-39, 41, 43-45, 56, 67, 69, 71 and 75-77 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Chen et al.* (U.S. Patent No. 5,751,791) in view of *Verbeek* (U.S. Patent No. 5,119,372). Claims 1-3, 5, 21-22 have been cancelled. Claim 67 has been amended to incorporate the limitations of claims 68, 71 and 72. Applicants traverse the rejections of claims 38, 39, 41, 43-45 and 56.

Claim 38 specifically recites the step of sufficiently throttling the data sent from the workstation to the telephone to increase a rate of transfer of the audio information during the communicating step. The Examiner has asserted on page 3 of the Office Action that it is inherent

that the rate of voice transmission would increase when the data transmitted from the computer terminal is throttled. To the contrary, it is actually suggested in *Verbeek* that the audio information be throttled and not the data sent from the workstation. *Verbeek* specifically states that it may be permitted that one or a plurality of data cells of a telephone conversation are lost and that this reduces only the understandability, but the conversation need not become impossible provided that the number of lost data cells does not become large. Col. 1, lines 46-53. Therefore, the most that *Verbeek* teaches or suggests is that if there would be any throttling, it would be of the rate of transfer of the audio information and not throttling of other types of data. Therefore, the Examiner is incorrect in stating on page 3 of the Office Action that the "motivation is to prioritize voice transmission." Actually, the motivation in *Verbeek* is to prioritize data transmissions other than voice. As a result, a combination of *Verbeek* and *Chen* would teach and suggest to one of ordinary skill in the art at the time the invention was made to sufficiently throttle the audio information in order to increase a rate of transfer of data sent from the workstation to the telephone. This is opposite of what is specifically recited within claim 38. As a result, the combination of *Verbeek* and *Chen* does not make obvious claim 38 and its dependent claims.

More specifically with respect to claim 56, which recites that the throttling results in no data being sent from the workstation to the telephone, the combination of *Chen* and *Verbeek* would clearly teach away from such a claim limitation, because this would be the opposite of the intent of the *Verbeek* disclosure.

Claims 57-58 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Lee* (U.S. Patent No. 6,876,648) in view of *Verbeek*. In response, Applicants respectfully traverse this rejection.

The Examiner admits that *Lee* does not disclose the throttling aspects of the claimed invention. The Examiner therefore turns to *Verbeek* for such teachings and suggestions. However, *Verbeek* merely discloses a multiplexer circuit for performing the congestion measurements and throttling, and does not in any way teach or suggest that the concepts and teachings in *Verbeek* may

be used in an IP telephony device, which is specifically recited within the claims. Further, *Lee* has absolutely no teaching or suggestion within it that throttling is needed in the IP telephony device disclosed in *Lee*. Therefore, there is no suggestion to combine *Lee* and *Verbeek*. In fact, the Examiner has not even provided a stated motivation as to why *Lee* and *Verbeek* can be combined to reject claims 57 and 58. Instead, the Examiner has merely parroted the motivation language from page 3 of the Office Action for combining *Verbeek* and *Chen*. Specifically, on page 5 of the Office Action, the Examiner's stated motivation for combining *Lee* and *Verbeek* is as follows:

> Therefore, it would have been obvious to one ordinary skilled in the art to apply the blocking means 40 of *Verbeek* into the telephone device in *Chen* in order to throttle data from being transferred from a computer terminal. The motivation is to prioritize voice transmission, increase rate transmission from the telephone and prevent data congestion.

As can be readily seen in this language, *Lee* is not utilized or mentioned. Therefore, the Examiner has failed to prove a *prima facie* case of obviousness in rejecting claims 57-58 in view of *Lee* and *Verbeek* because the Examiner has not provided objective evidence as to why *Lee* and *Verbeek* may be combined. Moreover, Applicants have shown above that one skilled in the art at the time the invention was made would not have combined *Lee* and *Verbeek* in order to arrive at the claimed invention.

In conclusion, as a result of the foregoing, Applicants respectfully assert that all of the claims in the application are now in condition for allowance.

Respectfully submitted,

WINSTEAD SECHREST & MINICK P.C.

Attorneys for Applicant

By: _____
Kelly K. Kordzik
Reg. No. 36,571

P.O. Box 50784
Dallas, Texas 75201
(512) 370-2851

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